

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

THE MANITOWOC COMPANY, INC.,
GROVE INVESTORS, INC., and
NATIONAL CRANE CORP.,

Defendants.

Case No. 1:02CV01509

Judge Royce C. Lamberth

Deck Type: Antitrust

UNITED STATES’S UNCONTESTED MOTION FOR ENTRY OF FINAL JUDGMENT

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) (“APPA”), the United States moves for entry of the proposed Final Judgment (“Judgment”) filed on July 31, 2002 in this civil antitrust proceeding. As set forth in the Hold Separate Stipulation and Order, also filed July 31st, the Court may enter the Judgment any time after compliance with APPA, if the Court finds that the Judgment would be in the public interest.

The United States’s Certificate of Compliance with Provisions of the APPA, filed today, describes steps the parties have taken to comply with applicable provisions of the APPA, certifies that the statutory waiting period has now expired, and points out that this matter is now ripe for the Court to make a public interest determination. The United States’s Competitive Impact Statement explains why entry of the proposed Final Judgment would be in the public interest.

I. BACKGROUND

On July 31, 2002, the United States filed a civil antitrust Complaint alleging that The Manitowoc Company, Inc.’s proposed acquisition of Grove Investors, Inc. would violate Section

7 of the Clayton Act, 15 U.S.C. § 18. The Complaint alleges that Grove and Manitowoc are, respectively, the nation's largest and third largest producers of medium- and heavy-lift boom trucks. Following the acquisition, Manitowoc would control more than sixty percent -- and it and another competitor more than 90 percent -- of sales of medium- and heavy-lift boom trucks in North America. According to the Complaint, the acquisition substantially increases the likelihood that Manitowoc will unilaterally or cooperatively increase prices of medium- and heavy-lift boom trucks to the detriment of North American consumers.

Simultaneously with the filing of its Complaint, the United States filed a proposed Final Judgment, a Hold Separate Stipulation and Order, and a Competitive Impact Statement. The proposed Judgment orders defendants to divest either Manitowoc's or Grove's boom truck business to an acquirer who will effectively compete in the production and sale of medium- and heavy-lift boom trucks in North America. Defendants must complete the ordered divestitures within one-hundred fifty days after July 31st or five days after notice of the entry of the Final Judgment, whichever is later. If defendants do not complete the ordered divestiture within the prescribed time, the Court will appoint a trustee to sell either defendant's boom truck business to an acceptable purchaser. Prior to implementing the divestiture, defendants must maintain the boom truck businesses subject to potential sale as independent, viable, and ongoing concerns.

The United States and defendants have stipulated that the proposed Judgment may be entered by the Court any time after the parties' compliance with the APPA. Entry of the proposed Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The APPA establishes a sixty-day period for the submission of public comments on any proposed judgment in a government antitrust case. 15 U.S.C. § 16(b). In this case, the sixty-day comment period expired on October 21, 2002. The United States received two comments on the proposed Judgment, and published the comments and the United States's responses in the *Federal Register*. Since all applicable requirements of the APPA have been met, it is now appropriate for the Court to determine whether entry of the Judgment would be in the public interest. 15 U.S.C. § 16(e).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Judgment, the Court must determine whether the Judgment “is in the public interest,” 15 U.S.C. § 16(e). In making that determination, the Court may consider:

- (1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;
- (2) the impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e).

In its Competitive Impact Statement previously filed with the Court, the United States has explained the meaning and proper application of the public interest standard under the APPA and incorporates those statements here by reference.

The public, including affected competitors and customers, has had an opportunity to comment on the proposed Final Judgment as required by law. Two comments were received,

reviewed and responded to, and neither raised concerns of sufficient magnitude to warrant the Court rejecting the proposed Judgment. No one has alleged or proved that the proposed settlement constitutes an abuse of the United States's broad prosecutorial discretion or that the relief contained in the proposed decree, when measured against the allegations of the government's initial antitrust complaint, does not fall well "within the reaches" of the public interest ((*United States v. Bechtel Corp., Inc.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981)).

IV. CONCLUSION

For the reasons set forth in this Motion and in the Competitive Impact Statement, the Court should conclude that the proposed Final Judgment is in the public interest, and enter the Judgment promptly without further hearings. (For the Court's convenience, the United States has attached to this pleading (Exhibit A) an identical version of the proposed Final Judgment, originally filed with the Court on July 31, 2002.)

Dated: November 25, 2002.

Respectfully submitted,

/s/
Anthony E. Harris
U.S. Department of Justice
Antitrust Division, Litigation II Section
1401 H Street, NW, Suite 3000
Washington, DC 20530
(202) 307-6583

Attorney for Plaintiff

CERTIFICATE OF SERVICE

I, Anthony E. Harris, hereby certify that on November 25, 2002, I caused copies of the foregoing United States's Certificate of Compliance with the Antitrust Procedures and Penalties Act and United States's Uncontested Motion for Entry of Final Judgment to be served on defendants The Manitowoc Company, Inc., Grove Investors, Inc., and National Crane Corp. by facsimile and by mailing these documents first-class, postage prepaid, to duly authorized legal representatives of those parties, as follows:

Counsel for Defendant The Manitowoc Company, Inc.

Darryl S. Bell, Esquire
Quarles & Brady LLP
411 East Wisconsin Avenue
Suite 2040
Milwaukee, WI 53202-4497
Telephone: (414) 277-5123

Counsel for Defendants Grove Investors, Inc. and National Crane Corp.

Michael L. Weiner, Esquire
Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036
Telephone: (212) 735-3000

Brian C. Mohr, Esquire
Skadden Arps Slate Meagher & Flom LLP
1440 New York Avenue, NW
Washington, DC 20005
Telephone: (202) 371-7774

Dated: Nov. 25, 2002.

_____/s/_____
Anthony E. Harris, Esquire
U.S. Department of Justice
Antitrust Division
1401 H Street, NW, Suite 3000
Washington, DC 20530
Telephone: (202) 307-6583